

**JOINT VENTURE CONSTRUCTION PROGRAM AGREEMENT
BETWEEN
THE SANTEE SIOUX NATION & INDIAN HEALTH SERVICE**

**JOINT VENTURE CONSTRUCTION PROGRAM AGREEMENT
BETWEEN
THE Santee Sioux NATION
AND
INDIAN HEALTH SERVICE
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

IHS-JVCP-FY 08

**ARTICLE I
PURPOSE OF AGREEMENT**

The Santee Sioux Nation (hereinafter the Tribe), a federally recognized Indian Tribe, located in the State of Nebraska, and the Indian Health Service (hereinafter the IHS), of the Department of Health and Human Services, United States of America, jointly enter into this IHS Joint Venture Construction Program (hereinafter the JVCP) Agreement (hereinafter the Agreement) for the purpose of outlining the parties respective responsibilities for planning, designing, constructing, equipping, leasing, and operating a tribally owned health care facility (hereinafter "the Facility"), for the Santee Sioux Health Care Facility, to be located in Santee, Nebraska.

**ARTICLE II
PROGRAM AUTHORITY**

This agreement is entered into under the authority of the Indian Health Care Improvement Act, Section 818(e), Public Law (P.L.) 94-437, 25 United States Code (USC) 1680h(e), as amended by P.L. 102-573, Title V, of P.L. 93-638, and H.R. 109-465 from 2007. The terms of this Agreement will be construed to conform with the statutory authority and amendments thereto. In the event of a conflict between the statute and this Agreement, the statute will govern.

**ARTICLE III
BACKGROUND**

The IHS is authorized to establish joint venture construction program projects with Indian tribes for the construction of health care facilities, as outlined below:

- A. Section 818(e) of P.L. 94-437 authorizes the IHS to make arrangements with an Indian tribe to establish a joint venture project for the acquisition, including**

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construction, of a health care facility. The Indian tribe will expend tribal funds, private sector funds, or other available non-IHS resources, including loan guarantees, for the acquisition, including construction, of a tribally owned health care facility. In exchange, the IHS is to provide the initial equipment necessary to operate the health care facility; then, for a minimum of 20 years, the IHS is to lease the health care facility and the land incidental thereto under a no-cost lease, and provide supplies and staffing for the operation and maintenance of the health care facility.

- B. Subsection 818(e)(2) of P.L. 94-437** requires the IHS to make such arrangement with an Indian tribe only after the IHS first determines that the Indian tribe has the administrative and financial capabilities necessary to complete the timely acquisition or construction of the proposed new health care facility.
- C. Subsection 818(e)(3) of P.L. 94-437** provides that an Indian tribe that has entered into a written agreement for this program with the IHS and breaches or terminates, without cause, such agreement, shall be liable to the United States of America under the agreement. The IHS has the right to recover supplies, and any funds expended for operations and maintenance associated with the health care facility provided under the agreement. The IHS does not have any right to recover any funds expended for the delivery of health care services, or for personnel or staffing.
- D. Applicable Appropriation.** The Department of Interior and Related Agencies Appropriations Act for 2007 (House Report 109-465) and 2008 (House Report 2764), provides funding for equipping JVCP projects, provides specific directions and priorities for use of the FY 2007 funds, and, as a clarification of the authorizing language, requires the IHS to include in future budget requests the funding necessary to staff, operate and maintain the tribally owned health care facility covered by this JVCP Agreement. The fiscal year 2008 Appropriations provide additional language allowing IHS to use any remaining resources from the 2007 JVCP appropriation for the 2008 program.

**ARTICLE IV
PROJECT DESCRIPTION**

- A. General.** As provided for more specifically in Article VII, the Tribe will participate in the JVCP and will construct the Facility and provide the initial equipment. In exchange, as provided in Articles VIII through XIII, the IHS will lease the Facility and the land incidental thereto under a no-cost lease for a minimum of 20 years thereafter; and include in its annual budget requests funding for staffing and supplies to operate and maintain the Facility.

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B. Facility Size and Location. Pursuant to this Agreement, the Tribe will construct a new 34,121 gross square foot addition to the existing 7,104 gross square foot outpatient health care Facility, which is located on 5.62 acres, in the county of Knox, in the State of Nebraska. The IHS will request funding from Congress as provided in Article XI.

C. Project Schedule. The Tribe and the IHS agree to the following estimated project schedule:

Start design:	01/21/08
Complete design:	10/01/08
Start construction:	10/01/08
Initiate equipment procurement:	N/A
Execute 20-year lease:	10/01/09
IHS Budget Year for Operating Resources	2010
Complete construction (Beneficial Occupancy Date):	10/01/09

D. Schedule Limitations. The above project schedule of estimated dates for project milestones is subject to change as required by unforeseen circumstances that are not within the control of the Tribe or the IHS. Reasonable changes are to be addressed by the Tribe and IHS Project Managers as necessary. Any disagreements are to be dealt with in accordance with the Agreement Article XVI Disputes.

**ARTICLE V
ELIGIBILITY CONDITIONS FOR PARTICIPATION**

A. Tribal Resolution. The Tribal Resolution provided in Tab A attests the Tribe's intention to participate in the JVCP.

B. Administrative Capability. The Tribe has submitted an Administrative Capability Brief (Tab B) as documentation that the Tribe has the administrative capability necessary to complete the timely construction of the health care facility.

C. Financial Capability. The Tribe has submitted a Financial Capability Brief (Tab C) as documentation that the Tribe has the financial capabilities necessary to complete the timely construction of the health care facility. The Tribe will expend tribal, private, or other available non-IHS funds for the acquisition or construction of the tribally owned health care facility. The proposed funding sources are identified in the Tribe's Financial Capability Brief (Tab C).

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D. IHS Determination of Eligibility. The IHS has reviewed the Tribal Resolution (Tab A), the Administrative Capability Brief (Tab B), and the Financial Capability Brief (Tab C) and has determined that the Tribe has the administrative and financial capabilities necessary to complete the timely construction of the proposed health care facility, as required for participation in the JVCP by the program authorizing legislation.

ARTICLE VI
PRE-AGREEMENT CONDITIONS

- A. Determination of Need.** A need for the proposed health care facility has been determined in planning documents mutually developed under the IHS Health Facilities Joint Venture Construction Application Process, in conformance with the IHS Demand Forecasting (2001 population) for workload, the IHS Resource Requirements Methodology (RRM) for staffing, the HSP 2007 Version of IHS space planning criteria, and the IHS Facilities Budget Estimating System (FBES), for the project.
- B. IHS Area Certification.** Tab D contains a certification by the Aberdeen Area IHS, dated, 09/14/07, that the proposed project is consistent with the applicable IHS Area Health Facilities Master Plan, and that the Aberdeen Area IHS supports and recommends the proposed project.
- C. Approved Planning Documents.** The IHS has reviewed and approved the following identified planning documents (hereinafter the Planning Documents), which are incorporated into this Agreement by reference:

Program Justification Document (PJD), approved 09/08/08;
Program of Requirements (POR), approved 09/08/08; and
Site Selection and Evaluation Report (SSER), approved 04/11/08.

ARTICLE VII
TRIBAL RESPONSIBILITIES

- A. Project Management.** The Tribe has designated a Project Manager as reflected in Article XIX of this Agreement.
- B. During Design.** The Tribe is responsible for the design of the project in accordance with the IHS approved Planning Documents. The design will be in accordance with the standards listed in the 2007 edition of the IHS Architect/Engineer (A/E) Design Guide (hereinafter the "A/E Guide"), see Tab F listing clarifications and modifications to the A/E Guide. The A/E Guide is available for guidance. It is noted that the A/E Guide

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incorporates applicable sections of the Year 2006 edition of the Guidelines for Design and Construction of Hospital and Health Care Facilities, as published by the American Institute of Architects (AIA). The Tribe will administer and manage the design contract. The Tribe will consult with the IHS and establish a mutually agreed upon system for providing design documents to the IHS for review as provided for in Article VIII, paragraph C.(1), of this Agreement.

- C. English Language Requirement.** All documents prepared for this project will be in the English language.
- D. Metric Requirement.** The Metric Requirement will be waived for the JVCP project.
- E. Conditions for Building Other Than That in Approved Planning Documents.** If the Tribe determines to design or build the Facility to provide fewer services than those in the approved PJD or to a smaller size than that in the approved POR, the procedures of Article XXIII apply. Under these circumstances templates in the Approved Planning Documents are a design guide only to the extent that they conform to current operational methods and efficiencies in design and construction.
- F. During Construction.** The Tribe is responsible for the construction of the project in accordance with the plans and specifications approved by the IHS as set forth in Article VIII, paragraph C.(2), of this Agreement. The Tribe will administer, and manage the construction contract, and is responsible for inspecting the construction work to ensure quality control, safety, and compliance with the approved plans and specifications. The Tribe shall conduct monthly meetings with the Project Leadership Team, consisting of representatives of the Tribe, design team, and the construction contractor. IHS participation will be as requested by the Tribe subject to negotiation with the Tribe and buyback provisions of the Tribe's self-governance agreements. The Tribe is responsible for all construction warranty enforcement.
- G. Tribal Operations;** The parties recognize that the Santee Sioux Nation will own and operate the facility and any IHS programs, services, functions, and activities (PSFAs) carried out their end under Title V P.L. 93-638. At the time the IHS accepts the facility; the Santee Sioux Nation will propose to amend its funding agreement, if necessary, to assume operation of the facility and related PSFAs pursuant to 25 USC 458a-4.

ARTICLE VIII
IHS RESPONSIBILITIES

- A. General.** In exchange for the Tribe's design and construction of the proposed health Facility and the Tribe's purchase of equipment, the IHS agrees to lease the Facility and

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the land incidental thereto under a no-cost lease for 20 years and shall provide the supplies and staffing for the operation and maintenance of the Facility during the lease period subject to appropriations by the Congress.

B. Project Management. The IHS has designated a Project Manager as reflected in Article XIX of this Agreement.

C. Design and Construction Assistance and Oversight. The IHS shall provide technical assistance as requested by the Tribe subject to negotiation with the Tribe and buyback provisions of the Tribe's self-governance agreements.

(1) **During Design.** During the design of the facility, design development, and 100 percent construction documents phases, as these phases are defined in the A/E Guide. The reviews of the project plans and specifications will be for general compliance with the project requirements. At the schematics and 100 percent construction documents phases; the IHS will review and provide approvals of the project plans and specifications for general compliance with project requirements within 21 days of receipt. The IHS will provide all other reviews within 14 days of receipt as requested by the Tribe subject to negotiation with the Tribe and buyback provisions of the Tribe's self-governance agreements. Documents will be provided to IHS in hard copy and electronic media. The IHS will promptly notify the Tribe in writing of any concerns or issues that may lead to the non-compliance with the approved planning documents, at the schematic stage. If the IHS does not exercise its right to provide review comments and/or approvals within the specified time, the design phase will be deemed in compliance with the planning documents.

(2) **During Construction.** During construction the IHS will, at the Tribe's discretion, subject to negotiation with the Tribe and buyback provisions of the Tribe's self-governance agreements, participate in monthly on-site monitoring visits and/or critical milestone on-site monitoring visits. The IHS retains the right to conduct final project inspections jointly with the Tribe and to determine compliance with the planning documents. If the IHS identifies problems during final project inspections, the information shall be provided to the Tribe and shall be limited to items that are materially noncompliant. If the IHS identifies life safety issues or an incomplete facility, the IHS will exercise its authority not to execute the lease. If the IHS does not exercise its right to inspect the facility, the facility will be deemed in compliance with the planning documents.

D. Not Responsible for Claims. The IHS or the USA is not responsible for any claims arising from the design or construction of the Facility.

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- E. Initial Equipment.** The Tribe is responsible for procurement and funding of the initial equipment.
- F. Twenty-Year Lease.** The IHS will enter into a 20-year no-cost lease pursuant to Article X of this Agreement.
- G. Staffing, Operation and Maintenance of Facility.** Annually, during the 20-year lease period, the IHS will request funds for the staffing, operation of the Facility (including supplies), maintenance of the Facility, and routine equipment replacement and upgrades, as provided respectively in Articles XI through XIV of this Agreement. The IHS will not reduce funding appropriated for the staffing and operation of the Facility, except pursuant to an across the board reduction in appropriations from the previous fiscal year (rescission) for the programs, functions, services, or activities carried out at the Facility. In the event of such reduction in appropriations, the IHS will not reprogram or otherwise use funds allocated to other facilities in the IHS Service Unit, IHS Headquarters tribal shares, or IHS Area shares, to maintain the staffing and operation of the Facility. Under these circumstances, the IHS will not reduce funding any more than pro rata, based on reductions in appropriations. Operational Funds will be considered as P.L. 93-638, Section 106 (a) (1) funds.

ARTICLE IX
INITIAL EQUIPMENT

- A. Funding. Responsibility of the Tribe.**
- B. Equipment Procurement List. Responsibility of the Tribe.**
- C. Purchasing Agent. Responsibility of the Tribe.**
- D. Equipment Warranties.** The buyer (Tribe) of the initial equipment is responsible for the enforcement of equipment warranties.
- E. Ownership, Repair and Replacement.** The Tribe is the owner of the initial equipment. Responsibility for repair or replacement of the initial equipment after the warranty period rests with the actual user.

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ARTICLE X
TWENTY-YEAR NO-COST LEASE

- A. Execution.** No later than 30 days prior to the completion of the construction work for the Facility, the Tribe and the IHS will negotiate a 20-year no-cost lease agreement, for the Facility and the land incidental thereto. The beginning date of the lease will be the later of the following dates; the date that the Facility is accepted for beneficial occupancy by the Tribe (the date ownership of the 100% completed and operable facility is transferred from the construction contractor to the tribe), or the date that the facility is accepted by the IHS as provided for in Article VIII, paragraph C. (2), of this Agreement. The lease document will be negotiated and signed by the tribe and the warranted IHS Lease Contracting Officer.
- B. Responsibilities.** During the 20-year lease period, the Federal Government will be responsible for all claims arising from its operation and maintenance of the Facility, either directly or under a contract authorized by The Indian Self-Determination and Education Assistance Act (ISDEAA), P.L. 93-638, as amended, to the extent provided for by the ISDEAA and the Federal Tort Claims Act. The Tribe will be responsible for any repairs, renovation, or replacement of the Facility if it is destroyed through an act of God.
- C. Conditions of Lease.** The lease instrument will not address issues of staffing, operations, reserve accounts, depreciation, or debt service.
- D. Options at End of Lease.** At the end of the 20-Year Lease, it may be renewed, under the authority of P.L. 93-638.

ARTICLE XI
STAFFING

The IHS will request funding from Congress for Fiscal year 2010 on the same basis as IHS requests funding for any other new Facility. The IHS will request staff funding for the opening year of the facility at 85 percent of the total staffing need minus the existing staff, as determined using IHS RRMMA Criteria and the IHS approved User Population data. Actual funding for staff will be based on the actual Congressional appropriation. During the 20-year lease period, the IHS annually will request funding for staffing costs of the Facility in accordance with its routine method of budget requests for Self-Governance Tribes. Facilities completed during the fiscal year under a Joint Venture Agreement are eligible for the pro rata share of the operating costs, including staffing, if the Facility is leased for a portion of the fiscal year, after all aspects of the project are completed, ready for occupancy and the lease

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is signed, subject to the availability of funds. The pro rata share for the initial year will be based on or after the construction completion date, as stated in this JVCP Agreement.

**ARTICLE XII
OPERATIONAL COSTS**

During the 20 year lease period, the IHS agrees to identify and request annually, through the IHS Budget Formulation process for annual appropriations, funds for the operation of the Facility, including supplies. Actual funding will be based on the actual Congressional appropriation.

**ARTICLE XIII
MAINTENANCE AND IMPROVEMENT OF FACILITY**

Funding for the maintenance and repair of the Facility during the lease period will be identified and requested through the IHS Budget Formulation process and will be provided on the same basis as all IHS supported health care facilities through the IHS Facilities Maintenance and Improvement (M&I) Account. Actual funding is subject to actual annual appropriations. The Tribe, recipient of the M&I funding, is responsible for all maintenance, repairs, and improvements not involving additional space. The Tribe, as the owner of the Facility, is responsible for capital improvements involving additional space. M&I funding may not be used to increase space.

**ARTICLE XIV
ROUTINE EQUIPMENT REPLACEMENT AND UPGRADES**

The Tribe as operator of the medical program for the Facility shall be the recipient of routine medical equipment funding and is responsible for the replacement and upgrading of medical equipment. Funds will be provided by the IHS on the same basis as for all IHS supported medical equipment.

**ARTICLE XV
APPORTIONMENT OF LIABILITY**

A. Statutory Provisions. If the Tribe, having entered into this Agreement with the IHS, breaches or terminates, without cause, the Tribe will be liable to the United States of America as provided herein for the amount that has been paid to the Tribe, or to third parties on the tribe's behalf under this Agreement. The IHS has the right to recover

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supplies, and any funds expended for operations and maintenance associated with the Facility provided under this Agreement. The IHS does not have any right to recover any funds expended for the delivery of health care services, or for personnel or staffing.

B. Termination for Default. If the Tribe refuses or fails to prosecute the design or construction of the Facility, or any separable part of the Facility, with the diligence that will insure its completion within five years from the date of this Agreement, including any extension, the IHS may, by written notice to the Tribe, terminate this Agreement for default, either entirely or for the separable part of the Facility that has been delayed; provided, however, that the IHS may not terminate this Agreement for any delay caused by the IHS. If the Tribe proceeds with the design and/or construction of the Facility after a termination for default, it does so at its own risk. In this case, the IHS will not provide technical assistance during the design and construction, and the IHS will not be required to equip, lease, staff, or operate the Facility. In the event of termination for default, the IHS will not proceed with the leasing of the Facility. The Tribe will be liable to the IHS for any damage to the IHS resulting from the Tribe's refusal or failure to complete the work within the time specified above.

C. Excusable Delays. This Agreement will not be terminated for default and the Tribe will not be charged with damages if (1) the delay in completing the design or construction of the Facility arises from unforeseen causes beyond the control and without the fault or negligence of the Tribe. Examples of such causes include (i) acts of God or of the public enemy, (ii) acts of the Government in either its sovereign or contractual capacity, (iii) acts of another contractor in the performance of a contract with the Government, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of Tribal contractors, subcontractors or suppliers, at any tier, arising from unforeseeable causes beyond the control and without the fault or negligence of both the Tribe and its contractor, subcontractors, or suppliers; and (2) the Tribe, within 10 days from the beginning of any delay (unless extended through an amendment to this Agreement), notifies the IHS Project Manager in writing of the causes of the delay. The IHS Project Manager will ascertain the facts and the extent of the delay. If, in the judgment of the IHS Project Manager, the findings of fact warrant a time extension for this Agreement, the IHS Project Manager shall recommend to the Director, IHS, that this Agreement be extended. The findings of the Director, IHS shall be final and conclusive on the parties, but subject to appeal under the Disputes clause.

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**ARTICLE XVI
DISPUTES**

This Agreement is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). If a claim is presented by the Tribe to the IHS Project Manager for action by the Director, IHS, or by the IHS to the Tribe, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR), including mediation.

**ARTICLE XVII
MISCELLANEOUS CONDITIONS**

- A. General.** Both parties to this Agreement understand and mutually agree that: (1) implementation of this Agreement is of mutual benefit; (2) this Agreement does not constitute a commitment of funds; and (3) performance under this Agreement by either party is dependent upon lawful appropriation, and the availability and allocation of funds by proper authorities.
- B. Release of Information.** Unless otherwise required by law, any documents or data exchanged between the parties to this Agreement will not be released to a third party unless the designated representative of the party that generated the document or data approves the release.
- C. Depreciation Costs.** The IHS is not liable for any depreciation costs.
- D. Debt Service.** If the Tribe becomes indebted in carrying out this Agreement, either through the use of bonds issued for financing the design and/or construction of the proposed project, or by any other means, the IHS shall not be liable, as a guarantor or otherwise, for any debt service that might be generated by the Tribe. This provision is not intended to limit the Tribe's ability to use third party payments or other acceptable sources for payments of financing for the construction of the project.

**ARTICLE XVIII
INCORPORATION OF REFERENCES**

This Agreement incorporates one or more documents by reference. The incorporation of these is with the same force and effect as if they were given in full text in this document. Both parties to this Agreement have copies of cited documents.

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**ARTICLE XIX
POINTS OF CONTACT**

The following named individuals are designated as Project Managers for the Tribe and the IHS, to represent the parties to this Agreement, and shall be the primary points of contact for this project. For any changes deemed required by either party, proper notification shall be provided in accordance with Article XX of this Agreement.

For the Tribe:

Mike Henry, Health Director
Santee Health Center
110 S. Visiting Eagle Street
Niobrara, NE 68760
Office: (402) 857-2300
Fax: (402) 857-2315

For the IHS:

Mike Boland, P.E., Facilities Engineer Consultant
IHS, Division of Facilities Management
Aberdeen Area Office
115 – 4th Avenue SE
Aberdeen, SD 57401
Office: (605) 226-7484
Fax: (605) 226-7580

**ARTICLE XX
NOTICES**

All notices required to be given under this Agreement shall be provided to the individuals listed in Article XIX of the Agreement and the Chairman of The Santee Sioux Nation. Such notices are to be sent by certified first class mail, return receipt requested, through the U.S. Postal Service.

**ARTICLE XXI
RECORDS**

Reports, files and other records relating to construction and equipment purchase shall be available during the construction period for information purposes for both parties. All books and accounts shall be subject to the Tribe's annual tribal audit under P.L. 93-638 as Amended.

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**ARTICLE XXII
TERM OF AGREEMENT**

This Agreement is valid upon signature of both parties and becomes effective upon date of the last signature. Signatories are authorized representatives of both parties. The Agreement shall remain in effect until the end of the 20-Year lease, which may be renewed, terminated or renegotiated at the option of the parties.

**ARTICLE XXIII
REVISIONS OR AMENDMENTS**

- A. Agreement Modifications.** This Agreement may be revised or amended in writing, except as otherwise provided in this Agreement, only by the agreement of the parties to this Agreement or their official successors or assignees.
- B. Planning Documents Amendments.** Any amendments to the Planning Documents incorporated into this Agreement must be processed also for IHS approval in accordance with the IHS established guidelines for each document, as contained in the IHS Technical Handbook for Environmental Health and Engineering.
- C. Concurrence or Non-Concurrence with Planning Document Changes.** If the IHS approves an amendment to a planning document and the Tribe concurs with the amendment, the amended planning document shall be deemed incorporated into this Agreement. If the Tribe does not concur with the amended planning document, the Tribe will notify the IHS in writing and the document shall not be considered incorporated into this Agreement. If the IHS does not approve a Tribe's proposed amendment to a planning document, and the Tribe wishes to proceed to build additional space or provide an additional service as a tribal venture, then the Tribe and the IHS may negotiate a separate Memorandum of Understanding with respect to this tribal space or tribal services that is outside the scope of the project as reflected in the approved Planning Documents. This Agreement does not require the IHS to staff or provide equipment for such additional tribal space or tribal services.

**ARTICLE XXIV
RIGHTS UNDER P.L. 93-638**

Nothing in this Agreement shall be construed to alter or impair the Tribe's right to contract to operate the health center in this project under The Indian Self-Determination and Education Assistance Act, P.L. 93-638, as amended.

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- A. Copy of Tribal Resolution, dated 07/05/07
- B. Copy of Tribes Administrative Capability Brief, dated 08/30/07
- C. Copy of Tribes Financial Capability Brief, dated 09/06/07
- D. Copy of 09/14/07 Area IHS Project Certification
- E. Copy of Project Facility Budget Cost Estimate, dated 07/25/08
- F. A/E Design Guide Clarifications and modifications

WHEREOF, this Agreement has been executed by the parties and persons whose signatures appear below:

APPROVED AND ACCEPTED
FOR
THE SANTEE SIOUX NATION

By: 
Roger Trudell
Chairman

Date: Sept 28, 2008

APPROVED AND ACCEPTED
FOR
INDIAN HEALTH SERVICE

By: 
Bob McSwain
Director

Date: 9/18/08



DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Indian Health Service
Rockville MD 20852

SEP 17 2008

TO: Director
Through: Deputy Director, IHS DS

FROM: Director
Office of Environmental Health and Engineering

SUBJECT: Santee Sioux Joint Venture Agreement (Project Number 409) – ACTION

ISSUE

The attached Joint Venture Construction Program (JVCP) Agreement outlines the responsibilities for planning, designing, constructing, equipping, leasing, and operating a tribally owned facility between the Santee Sioux Tribe of Nebraska and the Indian Health Service (IHS). The JVCP Agreement is submitted for your approval.

DISCUSSION

Utilizing FY2008 JVCP funds, the Santee Sioux Tribe of Nebraska is participating in a JVCP Agreement with the IHS to construct the Santee Health Center in Santee, Nebraska. Under this program, the Tribe will construct a new health center, utilizing tribally obtained funds. The IHS will enter into 20-year-no-cost space lease with the Tribe and will also provide funding to staff, operate, and provide the supplies for 20 years for the expanded portion of the facility. The existing facility is currently operated under a Title I contract. This arrangement will continue after implementation of this Joint Venture Agreement and the no-cost lease.

The Program Justification Document and Program of Requirements gives the IHS approval to support the Health System Planning maximum 3,170 m² of space for the purposes of Joint Venture staffing and supportable space calculations.

The 100 percent design staffing level is 65 positions as authorized by the IHS Resource Requirements Methodology Needs Assessment. The opening date projected by the Tribe is October 2009. The approved project staffing level for IHS support positions will be calculated per the terms of the JVCP Agreement.

This agreement has been thoroughly reviewed by IHS and Tribe legal counsels and has been found acceptable to both parties. The Chairman of the Santee Sioux Tribe approved and signed this document on September 8, 2008.

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RECOMMENDATION

The Aberdeen Area IHS submits and recommends approval of the attached Joint Venture Agreement. Accordingly, I recommend that you approve the documents by initialing on the "Approved" line that follows and by signing the attached Joint Venture Agreement.

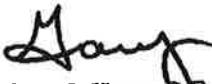
DECISION

Approved

 Disapproved

Date

9/18/08


Gary J. Hartz, R.E.

Attachment:

Bob,
pls note
the yellow tab
on ART X1 -
STAFFING. This
will address past
issues. GJH

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TAB A
Copy of Tribal Resolution, dated 07/05/07

07-06-'07 01:02 FROM-SHC BUSINESS OFFICE 4028572416

T-237 P008/011 F-711

Santee Sioux Nation

COUNCIL HEADQUARTERS / MUSEUM

Chairman: Roger Trudell
Vice Chairman: David Henry
Treasurer: Robert Campbell
Secretary: Wyatt Thomas



108 Spirit Lake Avenue West
Nebraska, NE 68760-7219
Phone: (402) 857-2772
FAX: (402) 857-2779

RESOLUTION

OF THE SANTEE-SIOUX NATION

RESOLUTION NUMBER

WHEREAS; the Santee Sioux Nation of the Great Sioux Nation in Nebraska is a federally recognized Indian Tribe organized pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (48Stat. 984) as amended by the Act of June 15, 1935 (Stat. 378), and

WHEREAS; the Constitution of the Santee Sioux Nation, Article IV, Section 1 (a), authorized the Tribal Council to negotiate with Federal, State, and local governments on all activities that may affect the Santee Sioux Reservation, and

WHEREAS; Article IV, Section 1 (j) of the Constitution authorized the Tribal Council to safeguard and promote the general welfare of the tribe including health, and

WHEREAS; Article IV, Section 1 (r) of the Constitution authorized the Council to delegate powers to subordinate boards or tribal officials, and

WHEREAS; the Santee Health Center, a department of the Santee Sioux Nation, has been delegated the responsibility for providing for the health care needs of the tribe, and

WHEREAS; the Santee Sioux Nation is an eligible tribal government to apply and receive funding from the Indian Health Service (IHS), now

THEREFORE BE IT RESOLVED: the Santee Health Center is applying for participation in the JVCP and committing to purchasing the medical equipment

07-06-'07 01:02 FROM-SHC BUSINESS OFFICE 4828572416

T-237 P009/011 F-711

CERTIFICATION

This is to certify that the foregoing Resolution was considered at a Regular meeting of the Tribal Council of the Santee Sioux Nation duly called and held on the 15 day of July, 2007, and was adopted by vote of 7 for and 0 against, and 1 not voting or absent.

ATTEST


Roger Trudell, Chairman
Santee Sioux Nation


Wyatt Thomas, Secretary
Santee Sioux Nation

JOINT VENTURE CONSTRUCTION PROGRAM AGREEMENT
BETWEEN
THE SANTEE SIOUX NATION & INDIAN HEALTH SERVICE

TAB B

Copy of Tribes Administrative Capability Brief, dated 08/30/07

Pages 4 and 5 from the Final JVCP application submitted by the Santee Sioux Tribe discussed the Tribes Administrative capability under the section titled **Financial Plan**.

services for the project, including administration of the construction contract. Mr. Peters, owner of the firm has been personally involved in the project since its inception, and will continue to be involved through completion of construction.

We intend to hire a construction management firm to be responsible for construction of the project. The CM firm will take bids on multiple contracts on behalf of the owner, will write contracts between the prime contractors and the owner, and provide general management of the work of multiple contractors. The firm will work with the architect through completion of construction.

The Architect will act as the owner's representative through the construction phase, and will provide general administration of the construction contract between the Construction Manager and the Owner. The Architect will perform periodic site observations to determine that the work is in compliance with the periodic site observations to determine that the work is in compliance with the contract documents, will provide review of shop drawings for compliance, and will review monthly applications for payment with the Construction Manager. The full responsibilities of the Architect during construction phase shall be as indicated in the General Conditions of the Construction Contract (AIA document A-201).

Project Budget Estimate

The Santee Sioux Nation will utilize the Federal Budget Estimating System (FBES) and the Health Systems Planning (HSP) software reports, attached in Appendix B, to set the overall cost for the proposed project at \$8,004,300.

Financial Plan

The Santee Sioux Nation has \$500,000 cash on hand and has already spent an additional \$300,000 on planning and designing the proposed new facility so far. The Tribe will utilize existing funding, of \$500,000 cash on hand, for a portion of the total costs of this project. This funding will stem from various funding resources to include Tribal Set Aside funds, Economic Development Proceeds, and clinic revenue titled as Medical Clinic Escrow. See letter (copy) from Tribal Treasurer attached in appendix D. For additional loan funding needed for this project the Santee Sioux Nation will utilize primarily two (2) funding resources for financing costs of planning and development of the proposed clinic project, namely, Native American Bank (NAB) and with United States Department of Agriculture (USDA), through the Community Facility program under Rural Development. The Tribe's administration has had previous work experience between the two agencies and in particular with financing the construction costs of the existing medical clinic. The existing health center will be paid off prior to beginning construction on the proposed project; therefore, it will be considered an asset. The Santee Sioux Nation is also working with Mdewakanton Sioux Tribe through their grant and loan programs for additional grant funding for this project. The Santee Sioux Tribe has received financial assistance from the Mdewakanton Sioux Tribe to fund other large scale projects in the past, such as purchasing the Feather Hill convenience store, EZ Mart truck stop and convenience

store, and other smaller projects. Copies of pertinent financial documents are attached in Appendix D.

The Santee Sioux Tribe has included its NEARC report in Appendix D from our latest accepted audit by HHS from 2004. In response to the material weakness identified in the 2004 we have began a process to correct the identified issues. A response to the findings and the Tribe's plans to improve the internal controls to address the identified weaknesses is also attached in Appendix D.

Project Schedule Narrative

Due to compliance with IHS requirements, we will utilize the project schedule from the Federal Budget Estimating System (FBES) at Appendix B. The architect's project schedule illustrates a much shorter time table due to previous planning, however, the Architect's schedule will have to be amended to work with IHS if the Tribe is successful with this JVCP application.

JOINT VENTURE CONSTRUCTION PROGRAM AGREEMENT
BETWEEN
THE SANTEE SIOUX NATION & INDIAN HEALTH SERVICE

TAB C
Copy of Tribes Financial Capability Brief, dated 09/06/07

Santee Sioux Nation
COUNCIL HEADQUARTERS / MUSEUM

Chairman: Roger Trudell
Vice Chairman: David Henry
Treasurer: Robert Campbell
Secretary: Wyatt Thomas



108 Split Lake Avenue West
Niobrara, NE 68760-7219
Phone: (402) 857-2772
FAX: (402) 857-2779

September 6, 2007

Mike Henry, Director
Santee Health Center
Santee Sioux Nation

Re: Clinic expansion

Mike,

This correspondence provides explanation and commitment of cash assets from the Santee Sioux Nation that would be utilized toward the development of the above referenced project.

The Santee Sioux Nation has authorized a total sum of \$250,000 to the Santee Sioux Health Center for the proposed health center project. A balance of approximately \$250,000 will be allocated to the proposed project once the Tribal Council completes its budget for 2008. The budget should be completed sometime in October. Combined, a budget year sum of \$500,000 is available toward the cost of this proposed project.

It is noteworthy that, there has been previous planning and design activity on this project with an architect and much of the pre-design site evaluation is complete. The Tribe and Clinic have expended in excess of \$300,000 so far on architectural planning and design services.

There is also available funding in the Santee Health Center's Escrow Account which has an average daily balance of \$135,000. This account balance is the result of Third Party reimbursements (health insurance billing).

In closing, the Santee Sioux Nation is committed to this project and has the \$500,000 laid out above set aside in cash on hand plus had already spent \$300,000 on site evaluation and design. That makes a total of \$800,000 worth of funding on hand or project work already completed.

Sincerely,

Robert Campbell

Robert Campbell, Treasurer
Santee Sioux Nation

JOINT VENTURE CONSTRUCTION PROGRAM AGREEMENT
BETWEEN
THE SANTEE SIOUX NATION & INDIAN HEALTH SERVICE

TAB D
Copy of 09/14/07 Area IHS Project Certification



DEPARTMENT OF HEALTH & HUMAN SERVICES

Memorandum

Date: September 14, 2007

From: Associate Area Director, OEHE
Aberdeen Area Indian Health Service *[Handwritten signature]*

Subject: Joint Venture Application Review, Santee Sioux Tribe

To: Director, Division of Facilities Planning and Construction, Rockville

This memorandum is written to certify that the final application submitted by the Santee Sioux Tribe is complete and meets the requirements of the grant application instruction. The Tribe and agrees with the Area Master Plan and Aberdeen Area certifies that this application along with the attached draft HSP for this Service Area is in compliance with the Master Plan. The construction cost estimate for the proposed project is also well done and is compliance with the IHS Federal Budget Estimating System.

**JOINT VENTURE CONSTRUCTION PROGRAM AGREEMENT
BETWEEN
THE SANTEE SIOUX NATION & INDIAN HEALTH SERVICE**

TAB E
Copy of Project Facility Budget Cost Estimate, dated 07/25/08



SUMMARY OF THE BUDGET ESTIMATE

Santee Health Center

Print Date: 07/25/2008

Total Project Budget: \$11,897,000																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																
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2007 A/E DESIGN GUIDE CLARIFICATIONS AND MODIFICATIONS

The A/E Design Guide will be used for requirements except those as noted below and other changes necessary to reflect that the design of the Facility is being designed and constructed with Tribal funds and utilizing Tribal procurement processes.

1. Chapter 2.1.2; Delete.
2. Chapter 2.3, 4.1, 4.2.1, and Appendix 5, 21-8; Delete.
3. Chapter 2.4, Chapter 5 inclusive, Chapter 15.10; and all other references to Sustainability, Delete.
4. Chapter 2.5, Chapter 4.4; and all other references to Life Cycle Cost (LCC) Analysis, Delete.
5. Chapter 2.6, Chapter 4.5, 4.5.1, and 4.5.2, Chapter 8.3, and all other references to Value Engineering, Delete.
6. Chapter 3.1.11; Title Blocks, Chapter 3.1.16; Drawing Numbers, Chapter 3.2.4; Cover Sheet, and other references to DES standards may be substituted with Tribal approved equals.
7. Chapter 3.4.2; Cost Estimate Detail, A/E submissions are to correspond only with (3) Schematic Design Estimate, (4) Design Development Estimate, (5) 65 Percent Construction Documents Estimate, and (6) 100 Percent Construction Documents Estimate.
8. Chapter 4.8(2); Security, PIV requirements are not included in this JV Project.
9. Chapter 7 inclusive and Chapter 8.2(3); Concepts Submittal, and other references to conceptual designs, Delete.
10. Chapter 14; Delete, the bidding process shall follow in accordance with the Santee Sioux Nation Tribal Policy for Bidding.
11. Chapter 15; Construction Contract Administration, the General Requirements shall follow in accordance with the Santee Sioux Tribal Policy for Contract Administration.
12. Appendix 1, Concepts, Schematic Design; Delete.
13. Appendix 1, Design Development; to be incorporated into the 95 Percent Construction Documents.
14. Appendix 5, 21-5; Electrical Guidelines, Delete.
15. Appendix 5, 72-3; Indian Health Service (IHS) Metering Plan, Delete.